

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Appellant(s) :	Mark Jozef Willem Mertens	Examiner: Kurr, Jason Richard
Serial No. :	10/599,630	Group Art Unit: 2614
Filed :	October 4, 2006	Confirmation No.: 2046
For :	AUDIO LEVEL CONTROL	Dated: April 16, 2010

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**REPLY BRIEF**

Dear Sir:

This Reply Brief is in response to the Examiner's Answer mailed on February 16, 2010 to the Appeal Brief filed on December 3, 2009 for the above-identified patent application. This Reply Brief supplements the Appellant's Appeal Brief.

The **Status of Claims** begins on page 2 of this paper.

The **Grounds of Rejection to be Reviewed on Appeal** begins on page 3 of this paper.

The **Arguments** begin on page 4 of this paper.

The **Appendix of Claims** begins on page 14 of this paper.

## **I. STATUS OF CLAIMS**

The status of the claims of this application is as follows:

- (A) The instant application was originally filed with 25 claims of which only one claim of the originally filed claims is still pending, i.e., Claim 16 (more specifically, the instant application had 29 original claims of which a concurrently filed amendment cancelled Claims 15, 20, 21 and 29 resulting in the instant application being filed with 25 claims);
- (B) New Claims 30-53 were added during prosecution; and
- (C) Claims 16, 30-40 and 43-53 stand finally rejected and Claims 41 and 42 stand finally objected.

## **II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

Appellant requests review of the following outstanding ground of rejection:

- A) The rejection of Claims 32, 34-37, 46-48 and 51 under 35 U.S.C. §102(e) as being anticipated over U.S. Patent No. 7,349,548 to Wang (“Wang”);
- B) The rejection of Claims 16 and 30-31 under 35 U.S.C. §103(a) as being unpatentable over Wang in view of U.S. Patent No. 5,054,077 to Suzuki (“Suzuki”) and further in view of U.S. Patent No. 6,396,549 to Weber (“Weber”);
- C) The rejection of Claims 33 and 43 under 35 U.S.C. §103(a) as being unpatentable over Wang in view of U.S. Patent No. 4,464,781 to Kaneko (“Kaneko”);
- D) The rejection of Claims 38 and 49 under 35 U.S.C. §103(a) as being unpatentable over Wang in view of U.S. Patent No. 6,311,155 to Vaudrey et al. (“Vaudrey et al.”);
- E) The rejection of Claims 39, 50 and 52 under 35 U.S.C. §103(a) as being unpatentable over Wang;
- F) The rejection of Claim 40 under 35 U.S.C. §103(a) as being unpatentable over Wang in view of U.S. Patent No. 6,965,676 to Allred (“Allred”);
- G) The rejection of Claims 44 and 53 under 35 U.S.C. §103(a) as being unpatentable over Wang in view of U.S. Patent No. 5,048,091 to Sato et al. (“Sato et al.”); and
- H) The rejection of Claim 45 under 35 U.S.C. §103(a) as being unpatentable over Wang in view of U.S. Patent No. 7,373,650 to Rodriguez et al. (“Rodriguez et al.”).

### III. ARGUMENTS

Appellant has reviewed the Examiner's Answer and fully maintains all of its positions regarding each ground of rejection. Specifically, Appellant maintains that Wang, Suzuki, Weber, Kaneko, Vaudrey, Allred, Sato, and Rodriquez, taken alone or in any proper combination, fail to disclose, teach and/or suggest "an automatic adjustment unit adapted to receive the auxiliary audio signal and to receive an auxiliary level control signal derived from the main audio signal, and in response thereto to automatically adjust a level of the auxiliary audio signal to have a particular ratio with respect to a level of the main audio signal," as required by the independent Claims.

In the Examiner's Answer, Claims 32, 34-37, 46-48 and 51 were rejected under 35 U.S.C. §102(e) as being anticipated by Wang (U.S. Patent No. 7,349,548). Appellant respectfully traverses this rejection.

Independent Claim 32 recites, *inter alia*, as follows:

"an automatic adjustment unit adapted to receive the auxiliary audio signal ... and in response thereto to automatically adjust a level of the auxiliary audio signal to have a particular ratio with respect to a level of the main audio signal." (Emphasis added.)

It is respectfully submitted that Wang fails to disclose and/or suggest "... automatically adjust a level of the auxiliary audio signal to have a particular ratio with respect to a level of the main audio signal," as recited by independent Claim 32.

Wang is directed to an electronic apparatus including a selection part through which one of the sound input channels is selected, and a controller controlling the individual volume controllers to make the selected sound input channel have a normal volume level and to lower the output volume of unselected input channels below a **predetermined volume level**. (See e.g., Abstract)

Wang discloses the storage of a setup volume level which is previously set up by the user and employed as the output level of the unselected sound input channels. (Column 4, lines 42-45) When the user selects one input channel through the selection part, the microprocessor makes the selected input channel have a normal volume level and lowers the output volume levels of the unselected input channels below a predetermined volume level, where the lowered output volume levels of the unselected input channels are the setup volume levels stored in memory. (Column 4, lines 56-65) In other words, Wang teaches that the user predetermines the output volume level of the unselected inputs by storing a setup volume level in memory.

In contrast, in the present disclosure, after the user selects a main audio signal and an auxiliary signal the automatic adjustment unit receives the auxiliary signal and an auxiliary level control signal derived from the main audio signal and automatically adjusts the level of the auxiliary audio signal to have a particular ratio with respect to a level of the main audio signal. Here the volume level of the auxiliary audio signal is not predetermined or stored in memory but rather is automatically calculated as a ratio of the volume level of the main audio signal. Claim 32 is patently distinguishable over the teachings of Wang. There is no teaching or suggestion in Wang of automatically adjusting the level of an auxiliary audio signal to have a particular ratio with respect to the level of the main audio signal, as required by Appellant's Claim 32.

Accordingly, withdrawal of the rejection under 35 U.S.C. §102(e) with respect to Claim 32 and allowance thereof is respectfully requested.

It is respectfully submitted that independent Claim 46 recites similar limitations as those of independent Claim 32.

Accordingly, for at least the same reasons presented above for Claim 32, withdrawal of the rejection under 35 U.S.C. §102(e) with respect to Claim 46 and allowance thereof are respectfully

requested.

Claims 34-37, 47-48 and 51 depend, directly or indirectly, from one of independent Claims 32 and 46 and therefore include the claim limitations of their respective independent claims. Moreover, dependent Claims 34-37, 47-48 and 51 recite additional patentable features. Accordingly, for at least the same reasons given above for the allowance of Claims 32 and 46, the withdrawal of the rejection under 35 U.S.C. §102(e) with respect to dependent Claims 34-37, 47-48 and 51 and allowance thereof are respectfully requested.

In the Examiner's Answer, Claims 16 and 30-31 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Wang (U.S. Patent No. 7,349,548) in view of Suzuki (U.S. Patent No. 5,054,077) and in further view of Weber (U.S. Patent No. 6,396,549).

Claim 16 recites, *inter alia*, as follows:

“a second user-operable control device which responds to a user control to **toggle among a plurality of pre-set relative sound level ratios** between the main channel (MC) and the at least one auxiliary channel (AC1).”(Emphasis added.)

At page 18 of the Examiner's Answer, the Examiner admits that Wang does not disclose expressly “a second user-operable control device which responds to a user control toggle among a plurality of pre-set relative sound level ratios between the main channel(MC) and the at least one auxiliary channel (AC1).” The Examiner relied on Suzuki to cure such deficiencies.

Suzuki teaches a fader device in which absolute amounts of fading in the respective channels in the group operation mode can be readily recognized. (Column 1, lines 67-68 and Column 2, lines 1-2) When one fader in the group has been operated the position of the fader is detected and the amount of change is computed. (Column 4, lines 11-16) When in group mode this change value is then used to displace the other faders in that group by the same amount. (Column 4, lines 5-24) In

other words, Suzuki teaches the ability to group channels such that the adjustment of one channel automatically adjusts the other grouped channels by the same amount.

In contrast, in the present disclosure, the auxiliary channel is adjusted based on the sound level ratio between the main channel and auxiliary channel sound levels. The user selects the desired ratio to be used through a control toggle and the ratio is applied to adjust the auxiliary channel based on the main channel sound level value. There is no teaching or suggestion in Suzuki that a user can toggle among a plurality of pre-set relative sound level ratios as required by Appellant's Claim 16.

Additionally, Weber does not address the deficiencies of Wang and Suzuki with respect to Claim 16. There is no teaching or suggestion in Weber that a user can toggle among a plurality of pre-set relative sound level ratios as required by Appellant's Claim 16.

Accordingly, withdrawal of the rejection under 35 U.S.C. §103(a) with respect to Claim 16 and allowance thereof are respectfully requested.

Claims 30 and 31 depend directly from independent Claim 16 and therefore include the claim limitations found in Claim 16. Claims 30 and 31 are allowable over the prior art of record for at least the same reasons presented above for the patentability of Claim 16. Moreover, dependent Claims 30 and 31 recite additional patentable features. Accordingly, withdrawal of the rejection under 35 U.S.C. §103(a) and allowance thereof are respectfully requested.

In the Examiner's Answer, Claims 33 and 43 were rejected under 35 U.S.C. §103(a) as being unpatentable over Wang (U.S. Patent No. 7,349,548) in view of Kaneko (U.S. Patent No. 4,464,781).

Claims 33 and 43 depend directly from independent Claim 32 and therefore include the claim limitations found in Claim 32. Claims 33 and 43 are allowable over prior art of record for at

least the same reasons presented above for the patentability of Claim 32. Moreover, dependent Claims 33 and 43 recite additional patentable features. Additionally, Kaneko fails to address the deficiencies of Wang with respect to independent Claim 32. Kaneko fails to teach and/or suggest automatically adjusting the level of an auxiliary audio signal to have a particular ratio with respect to the level of the main audio signal, as required by Appellant's Claim 32. Accordingly, withdrawal of the rejection under 35 U.S.C. §103(a) with respect to Claims 33 and 43 and allowance thereof are respectfully requested.

In the Examiner's Answer, Claims 38 and 49 were rejected under 35 U.S.C. §103(a) as being unpatentable over Wang (U.S. Patent No. 7,349,548) in view of Vaudrey et al. (U.S. Patent No. 6,311,155).

Claims 38 and 49 depend indirectly from independent Claims 32 and 46 and therefore include the claim limitations of their respective independent claims. Claims 38 and 49 are allowable over the prior art of record for at least the same reasons presented above for the patentability of Claims 32 and 46. Moreover, dependent Claims 38 and 49 recite additional patentable features. Additionally, Vaudrey et al. fails to address the deficiencies of Wang with respect to Claims 32 and 46. Vaudrey et al. fails to teach and/or suggest automatically adjusting the level of an auxiliary audio signal to have a particular ratio with respect to the level of the main audio signal, as required by Appellant's Claims 32 and 46. Accordingly, withdrawal of the rejection under 35 U.S.C. §103(a) with respect to Claims 38 and 49 and allowance thereof are respectfully requested.

In the Examiner's Answer, Claims 39, 50 and 52 were rejected under 35 U.S.C. §103(a) as being unpatentable over Wang (U.S. Patent No. 7,349,548).



Claims 39, 50 and 52 depend indirectly from independent Claims 32 and 46 and therefore include the claim limitations of their respective independent claims. Claims 39, 50 and 52 are allowable over the prior art of record for at least the same reasons presented above for the patentability of Claims 32 and 46. Moreover, dependent Claims 39, 50 and 52 recite additional patentable features. Accordingly, withdrawal of the rejection under 35 U.S.C. §103(a) with respect to Claims 39, 50 and 52 and allowance thereof are respectfully requested.

In the Examiner's Answer, Claim 40 was rejected under 35 U.S.C. §103(a) as being unpatentable over Wang (U.S. Patent No. 7,349,548) in view of Allred (U.S. Patent No. 6,965,676).

Claim 40 depends directly from independent Claim 32 and therefore includes the claim limitations found in Claim 32. Claim 40 is allowable over the prior art of record for at least the same reasons presented above for the patentability of Claim 32. Moreover, dependent Claim 40 recites additional patentable features. Additionally, Allred fails to address the deficiencies of Wang with respect to Claim 32. Allred fails to teach and/or suggest automatically adjusting the level of an auxiliary audio signal to have a particular ratio with respect to the level of the main audio signal, as required by Appellant's Claim 32. Accordingly, withdrawal of the rejection under 35 U.S.C. §103(a) with respect to Claim 40 and allowance thereof are respectfully requested.

In the Examiner's Answer, Claims 44 and 53 were rejected under 35 U.S.C. §103(a) as being unpatentable over Wang (U.S. Patent No. 7,349,548) in view of Sato et al. (U.S. Patent No. 5,048,091).

Claims 44 and 53 depend, directly or indirectly, from independent Claims 32 and 46 and therefore include the claim limitations of their respective independent claims. Claims 44 and 53 are allowable over the prior art of record for at least the same reasons presented above for the patentability of Claims 32 and 46. Moreover, dependent Claims 44 and 53 recite additional

patentable features. Additionally, Sato et al. fails to address the deficiencies of Wang with respect to Claims 32 and 46. Sato et al. fails to teach and/or suggest automatically adjusting the level of an auxiliary audio signal to have a particular ratio with respect to the level of the main audio signal, as required by Appellant's Claims 32 and 46. Accordingly, withdrawal of the rejection under 35 U.S.C. §103(a) with respect to Claims 44 and 53 and allowance thereof are respectfully requested.

In the Examiner's Answer, Claim 45 was rejected under 35 U.S.C. §103(a) as being unpatentable over Wang (U.S. Patent No. 7,349,548) in view of Rodriguez et al. (U.S. Patent No. 7,373,650).

Claim 45 depends directly from independent Claim 32 and therefore includes the claim limitations found in Claim 32. Claim 45 is allowable over the prior art of record for at least the same reasons presented above for the patentability of Claim 32. Moreover, dependent Claim 45 recites additional patentable features. Additionally, Rodriguez et al. fails to address the deficiencies of Wang with respect to Claim 32. Rodriguez et al. fails to teach and/or suggest automatically adjusting the level of an auxiliary audio signal to have a particular ratio with respect to the level of the main audio signal, as required by Appellant's Claim 32. Accordingly, withdrawal of the rejection under 35 U.S.C. §103(a) with respect to Claim 45 and allowance thereof are respectfully requested.

#### **Dependent Claims 41 and 42 Contain Allowable Subject Matter**

The Examiner has stated that dependent Claims 41 and 42 contain allowable subject matter but are objected to as being dependent on a rejected base claim. Appellant thanks the Examiner for stating that Claims 41 and 42 contain allowable subject matter and respectfully submits that Claims 41 and 42 are allowable as indirectly dependent claims of independent Claim 32 for at least the same reasons presented above for the patentability of Claim 32.

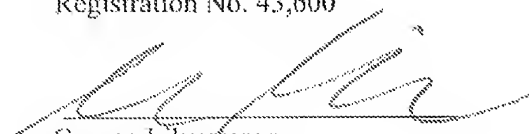
**CONCLUSION**

In view of the foregoing remarks, Appellant respectfully submits that all of the claims now pending in this application, namely Claims 16, 30-53, are in condition for allowance. Early and favorable reconsideration of this application is respectfully requested.

Respectfully submitted,

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